

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, July 7, 2011
REGULAR MEETING
6:30 p.m.

- A. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.
- B. PLEDGE OF ALLEGIANCE** – Led by Commissioner Hawkins
- C. ROLL CALL**

PRESENT: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge and Unsworth
ABSENT (EXCUSED): None.

Staff Present: Kimberly Brandt, Community Development Director, Gregg Ramirez, Senior Planner, Tony Brine, City Traffic Engineer, Leonie Mulvihill, Assistant City Attorney, Erin Steffen, Planning Technician, Fern Nueno, Assistant Planner, Javier S. Garcia, Senior Planner, Makana Nova, Assistant Planner, and Marlene Burns, Administrative Assistant

D. ELECTION OF OFFICERS

Motion made by Commissioner Toerge and seconded by Commissioner Hawkins, and carried (7– 0) to elect Charles Unsworth as Chair, Michael Toerge as Vice Chair and Bradley Hillgren as Secretary.

AYES: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge and Unsworth
NOES: None.
ABSENT: None.
ABSTAIN: None.

E. PUBLIC COMMENTS

Chair Unsworth opened the public comments period.

Chair Unsworth closed the public comments period.

F. REQUEST FOR CONTINUANCES – None.

G. CONSENT ITEMS

ITEM NO. 1 Minutes of June 23, 2011

Commissioner Hawkins proposed various changes to the minutes.

Motion made by Commissioner Hawkins and seconded by Commissioner Toerge, and carried (5 – 0) with 2 recusals (Kramer and Myers) to continue the minutes so that amendments can be made as stated.

AYES: Ameri, Hawkins, Hillgren, Toerge and Unsworth
NOES: None.
ABSENT: None.
ABSTAIN: None.

H. PUBLIC HEARING ITEMS**ITEM NO. 2** Pemstein Residence Minor Use Permit and Variance (PA2010-173)
2430 Holiday Road

The applicant is seeking a minor use permit to allow for the retention of an as-built second dwelling unit to be converted to a senior accessory dwelling (granny) unit and a related variance to allow for the construction of a garage addition to encroach 2 feet into the required 10-foot easterly side setback. The application also includes a request for variance approval to retain ten (10) as-built over-height structures located within required setbacks including: four (4) arbors, four (4) walls, a free-standing fireplace and a storage building.

Planning Technician Erin M. Steffen provided a staff report and utilized a PowerPoint presentation.

Planning Technician Steffen noted that staff's recommendation is to adopt the Resolution approving Minor Use Permit No. UP2010-040 for the granny unit and approving Variance No. VA2011-005 only for the construction of the garage addition to encroach two (2) feet into the required 10-foot easterly side setback, while denying the encroachment request of the arbors, walls, fireplace, and storage building. She stated that if the Planning Commission decides to recommend approval for the arbors, walls, fireplace, and storage building, which staff is recommending denial, the Commission must identify facts to support the required findings.

In response to questions from the Commission, Planning Technician Steffen clarified that the property owner has been notified that there is a 5-foot Southern California Edison (SCE) utility easement in the rear yard, if Commission were to recommend approval staff of the storage building which encroaches into the utility easement a condition of approval would be added that required the applicant to receive approval from SCE for the encroachment, the easement runs on the 5-foot line, the code states that the maximum height of fences, hedges, and walls shall be limited to 42 inches in the front setback and 6 feet in the side and rear setbacks, the applicant would either have to remove or redesign these structures to comply with the code, all requests are a result of a code enforcement violation, there are no letters of opposition regarding the project, the issue concerning the fireplace is its height because the applicant built it at 8 feet 3 inches but in order for the fireplace to be in compliance with the code it is limited to 6 feet in height and if the chimney is lowered then the fireplace would be in compliance, the issue with the storage building is similar: the applicant built it above 11 feet when it is limited to 6 feet in height, the storage building would need to be removed, lowered in height to 6 feet, or relocated within the buildable lot outside the setback to comply to the code

Discussion ensued between Planning Technician Steffen, the Commission and staff regarding traffic safety and visibility issues regarding the driveway, sight-distance requirements for driveways, line-of-sight, letters of support from adjacent neighbors, the close proximity of the applicant's yard to Tustin Avenue and the enjoyment of privacy as a possible finding to justify the continued existence of the walls and bringing the encroachments into compliance.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Toerge reported that he visited the site and talked to the applicant.

Commissioner Hawkins reported that he visited the site, spoke to the applicant and forwarded emails to the applicant in connection with the change in Planning Commission personnel.

Commissioner Ameri reported that he visited the site and spoke to the applicant regarding the various improvements and the variances request.

Chair Unsworth reported that he visited the site and spent time with the applicant looking over the items.

Chair Unsworth opened the public hearing.

Harold Pemstein, the applicant, stated that he submitted a color packet of photographs displaying the 55 inch wall, clarified the shrubs have been on the site for many years and are not intended to be a hedge, noted that he contacted SCE, that SCE visited the site and stated that they (SCE) will grant the applicant's requested easement for the storage building for a \$500 fee and stated that he submitted a rebuttal to staff's argument regarding the other 10 items.

Deborah Lucas, the co-applicant applicant, referenced a letter that she and the applicant submitted, stated that all of the items are property enhancements noting that none of them harm the neighbors visually or safety-wise, requested to work with the City and not destroy any of the beautiful improvements made over the last 22 years and noted that she did not keep records of verbal approvals from the City to make changes to the property.

In response to questions from the Commission, Planning Technician clarified that the following items all require permits: fences over 6 feet in height; storage units over 120 square feet or if less than that but have some kind of electrical or plumbing inside, stated that there are original permits for the 6 foot walls located in the rear as well as on the two (2) sides of the property.

Assistant City Attorney Mulvihill responded to a question from the Commission that a waiver or estoppels would not apply because the improvements in question did indeed, at the time of construction, require permits.

Chair Unsworth opened the public hearing period.

Steven Cameron, resident, stated that aesthetically the property is gorgeous based on the improvements they have made, asked the Commission to approve the application, stated that he is fully in support of their application and commented regarding the original constructions of adjacent homes.

James Stevenson, resident, commented on the 2-foot wall addition stating that he does not advocate a "free-for-all" with regard to the code but in this case he supports the variance, mentioned that he loves the fence and would like the fence to stay because it adds a degree of protection for privacy from noise, he has no objection to the storage building as long as the fence is there.

Chair Unsworth closed the public hearing period.

Commissioner Toerge thanked staff, stated that he is inclined given the circumstances of the application to seek a compromise from the code and the practicality of what is there, spoke regarding the arbor in the front-yard setback, stated that he believes there are compelling reasons and findings to justify approval of the arbors, walls, fireplace, and storage building, asked staff to help in crafting the findings to justify approval or continue it in order to identify the proper findings that can be generated, stated that he is not inclined to require the removal of the arbors, walls, fireplace, and storage building but stated that they should be brought into compliance if public safety issues arise, stated that he is troubled by the arbor in the front-yard setback and that his inclination is to require that the arbor in the front-yard setback be removed because it impacts others and adjacent property owners.

Commissioner Hawkins mentioned that the property owner across the street who is most affected by the variance request for the arbor in the front yard is in full support of the application and verified with staff that the applicant could leave the structure in place if he “cuts it up” meaning the applicant would be in compliance with two or three adjacent arbors as long as each one constitutes no more than 16 square feet as the code does not limit the number of these structures in the required yards.

Commissioner Hawkins also stated that he believes the Commission can make findings with respect to: all of the rear-yard improvements due to the circumstances of the property and the utility easement; side-yard height issues for the fences on both sides because they are necessary for privacy issues and especially the easterly part of the property especially if the Commission is going to approve the granny unit thus enhancing the livability of the structure; the chimney on the fireplace because the chimney is necessary for the safety of the fireplace; and stated that it is only the front-yard arbor that is an issue but if the applicant “cuts-it-up” then it will be in substantial compliance with the code.

Motion made by Commissioner Hawkins and seconded by Vice Chair Toerge, and carried (7 – 0) to approve the minor use permit and all the variances with respect to the findings previously stated regarding the arbors, walls, fireplace, and storage building.

AYES:	Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge and Unsworth
NOES:	None.
ABSENT:	None.
ABSTAIN:	None.

ITEM NO. 3 Whitacre Residence Appeal - (PA2010-105)
101 15th Street

The applicant requests a use permit for an addition of up to 75 percent of the existing gross floor area and alterations of up to 75 percent of the existing structural elements of a nonconforming structure. The applicant also requests a modification permit to allow the proposed addition to encroach five (5) feet into the required 5-foot side setback on the northerly side of the property in order for the proposed residential unit on the second floor to line up with the wall of the commercial structure on the first floor. The modification permit request is also to allow an 8-foot encroachment into the required 10-foot rear setback for the carports with a deck above. The site is developed with two (2) commercial structures adjacent to 15th Street and a residential structure to the rear. The applicant proposes an addition to the existing residence and the addition of a new dwelling unit above the commercial structures. Four-car parking is proposed to satisfy the residential parking requirements.

Assistant Planner Fern Nueno provided a staff report and utilized a PowerPoint presentation.

Community Development Director Kim Brandt noted that this is a De Novo hearing and that all the evidence can be considered.

In response to a question from Commission Hawkins, Assistant City Attorney Mulvihill clarified that Commissioner Hawkins is “free to sit in” and vote on this item even though he submitted an appeal letter and requested review of the application, noting that the code allows for the Planning Commission to call items up for review with no requirement of recusals.

Chair Unsworth spoke regarding the previous Zoning Code and parking issues relative to the commercial site and the totality of the project.

In response to Chair Unsworth's comments, Ms. Nueno referenced the "Nonresidential Parking" section in the code and clarified that parking for the residential addition is being provided (four car parking with two per unit) and that the Code does not require that the commercial parking be provided because there is no enlargement or intensification of the commercial use proposed because the applicant is only expanding the existing residential and proposing a new unit.

Commissioner Hawkins referenced Point No. 6 under Appeal Letter on page seven (7) of the staff report, mentioned that "demolitions" are not a defined term in the code however "alterations" and "structural alterations" are defined terms in the code, stated that his concern is regarding the demolition of majority of the commercial and then reconstruction of that noting that under the code's language it can be regarded as an alteration and mentioned that he feels the project is at 75 percent alteration, spoke regarding the findings in the resolution in comparison to the finding of the Zoning Administrator resolution, referenced handwritten page 16 New Finding: E which states that the cost of correcting the nonconforming condition would exceed the cost of the proposed project, New Information E3 that the Zoning Administrator did not have noting that the Zoning Administrator did not base his determination on the new information, stated that the new findings put a dollar number to the costs, mentioned that there was a missing part in connection with the Zoning Administrator's determination based on the new information and spoke regarding whether the Zoning Administrator made the appropriate findings in connection with the nonconformity of the use.

Assistant Planner Nueno clarified that historically the City has not considered demolishing entire walls and then rebuilding them as just a structural alteration, noted that demolishing three (3) out of four (4) walls would not be considered a structural alteration from the City's point of view, stated that the 75 percent rule allows for alterations to structural elements, that typically the City has done surface area calculations including roofs, foundations, and exterior walls and not necessarily each structural member within the wall, noted that the plans provided in the packet are essentially the same plans from the Zoning Administrator with the addition of the structural calculations since the appeal, noted that Fact in Support of Finding E3 was not included in the Action Letter findings, that the facts stated in the Action Letter were the basis for the approval and noted that there are just a few changes to the resolution based on the new information.

Community Development Director Brandt clarified for the record that there is new information in the Planning Commission Resolution that is different from the Zoning Administrator's Action Letter and asked Assistant Planner Nueno to point out what additional and supporting findings have been included in the Planning Commission Resolution.

Chair Unsworth stated that he is concerned about putting a brand new structure on top of a commercial building and potentially exceeding the 75 percent rule and inquired as to how Staff determined that \$550,000 (the estimated cost of the proposed project) is minor in comparison to the value of the nonconforming parking and setbacks.

Ms. Nueno noted the cost of the proposed project is compared to value of the nonconformity, not the cost of the nonconformity. Ms. Nueno further stated that the value of the nonconformity is not necessarily a monetary value, but rather the value of the existing, nonconforming condition. A development comparable to what is existing would not be able to be constructed under the current code, so the value of the existing nonconformity is value of having a mixed-use development on site compared with the cost of the proposed construction.

Commissioner Hawkins stated that one of the grounds for appeal was that the approval is inconsistent with use permits in the area and inquired as to whether it is an appropriate grounds for an appeal.

Assistant Planner Nueno clarified that D1 and E3 were the only changes to the findings from the Action Letter to the Planning Commission Resolution.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Hawkins reported that he spoke with Mr. Todd Schooler, an agent of one of the adjacent property owners who appeared at the hearing, noted that Mr. Schooler did not participate in the drafting of the appeal or call for review, and mentioned that he visited the site.

Commissioner Toerge reported that he visited the site.

Commissioner Myers reported that he visited the site.

Chair Unsworth opened the public hearing period.

Joe Angelo, applicant, stated that he believes the structures were built around 1945, that he does not intend to invade the majority of the commercial structure, commented regarding his neighbor's mixed-use property and stated that he read and is in agreement with all of the conditions.

William Azzalino, architect for the Whitacre Residence, spoke about the structure on the property, stated that the intention is to leave the existing walls complete, that the only new addition to the existing buildings would be the addition of two (2) new columns on either side for support, mentioned the carports, parking for the commercial, 75 percent rule, stucco upgrades, residential redevelopment and stated that he does not think there would be any problem with a condition that distributes the 75 percent alteration to the entirety of the structures but suggested that the condition state that there will be no more than 75 percent alteration to the commercial structures at all.

Chair Unsworth invited comments from the public.

Todd Schooler, architect representing Morrie Nero, asked why a use permit is required if the applicant only intends to demolish or alter 8-25 percent, suggested that the applicant be required to submit a demo plan, expressed his concerns regarding the cost of the proposed project, spoke regarding trash storage and suggested that the revised conditions of approval regarding the trash storage state that any trash enclosures belonging to the commercial site be located on their property.

Morrie Nero, property owner adjacent to the applicant, expressed his concerns regarding the parking requirements for the applicants' commercial establishment, the cost of the proposed project, requested removal of the trash storage from off the street, mentioned a potential handicapped parking space once the trash storage is removed, spoke regarding trenching along the Surf Shop property, stated that the Surf Shop wall is not adequate enough to support a second story and mentioned potential earthquake damage.

Maret Kunze, tenant of the adjacent property, expressed her concerns regarding high-density parking and requested that the construction be completed in a timely manner so it does not interrupt her business.

In response to comments and concerns, Mr. Angelo spoke regarding the trash storage, noted that he ordered a smaller trash storage and plans to move it from its current location, estimated that the commercial space will be down for approximately 30 days and stated that his goal is to rapidly complete the exterior and complete the project as fast as he can.

Chair Unsworth closed the public hearing.

Chair Unsworth re-opened the public comment period to allow the architect to elaborate on construction time.

Mr. Azzalino stated that a demolition plan has already been provided to the City and stated that an estimate of 12 months is a reasonable time frame for the anticipated completion of the project.

Chair Unsworth closed the public hearing.

Commissioner Ameri spoke regarding the integrity of the existing structure, public safety issues, a thorough review of the Traffic Engineer's report and stated that he is uncomfortable approving the project without a thorough review of the structural plans.

In response to questions from the Commission, Community Development Director Brandt clarified that Building and Planning will work together during the plan check review process to ensure that if the Planning Commission decides to approve this project, the proposed improvements will comply with all the applicable building codes and Zoning Code approval and noted that the approved permit for any demolition, structural alterations and new construction will comply with any zoning entitlement obtained for the project. She stated that if during construction, the structure is altered in a manner that is not consistent with the approval or require modifications to the permit, the City will issue a Stop Work Order (Red Tag) until the issues can be resolved.

Commissioner Kramer made a motion to uphold the decision of the Zoning Administrator and adopt the resolution with the Use Permit and Modification Permit.

Commissioner Hawkins seconded this motion for the purposes of discussion and noted the following additional amendments: make an additional finding that the structure is a nonconforming structure and base those findings on the appropriate language; the resolution also affirm the appeal in that there are several issues including the new facts that have been added; add a condition that states that the 75 percent alteration cannot be located in the existing nonconforming structures and note that the applicant accepts this condition.

Commissioner Hillgren expressed his concern regarding Item No. 10 under the conditions of approval and recommended that it be moved or tied to Item No. 31. The maker and the second of the motion accepted this recommendation.

In response to a clarification request from Mr. Ramirez regarding the added condition for 75 percent structural alterations, Commissioner Hawkins requested that the public comment period be re-opened to allow the architect to restate his more restrictive condition.

Chair Unsworth re-opened the public comment period.

Mr. Azzalino suggested that the condition state that the majority of all commercial walls shall remain intact meaning at least 50 percent of every wall has to remain intact and noted that there will be more specifics and information in the plans that he will submit to the Building Division.

Chair Unsworth closed the public hearing.

Community Development Director Brandt spoke regarding the limitations of alterations, referenced handwritten page 20 of the staff report and suggested Condition No. 4 read that "the alterations to all commercial structures on the property shall not exceed more than 50 percent of any structural exterior wall or roof" noting that this condition is limited to the exterior as proposed.

Commissioner Hawkins recommended that the amendment to Condition No. 4 state that “the alterations to all commercial structures on the property shall not exceed more than 30 percent of any structural exterior wall or roof” instead of 50 percent as proposed by Community Development Director Brandt. He stated that if his recommendation of a 30 percent limit to the amended Condition No. 4 is not acceptable to the maker of the motion then he would not support the motion.

Commissioner Kramer stated that the amendment was acceptable.

Commissioner Toerge expressed his concerns regarding the effectiveness of the estimate on construction costs, asked how or if staff's recommendation would change if the construction costs were to double, how much support staff has done to confirm the estimated numbers, inquired as to how the construction costs were estimated without detail plans, structural plans and structural calculations, stated that the numbers do not make sense, that there is a lack of hard evidence and stated that he does not believe that the applicant can build with the numbers he has proposed.

Assistant Planner Nueno stated that if construction costs were to double the only finding it would change is Fact in Support of Finding E3 which states that “the cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed”, mentioned that projected costs were provided by the applicant and reviewed by staff based on the valuation of projected which can be verified by the permit system and that the numbers are based on square footage and occupancy.

Motion made by Commissioner Kramer and seconded by Commissioner Hawkins, and failed (3 – 4) to uphold the decision of the Zoning Administrator and adopt the Resolution for Use Permit No. UP2010-021 and Modification Permit No. MD2010-027.

AYES:	Hawkins, Hillgren, and Kramer
NOES:	Ameri, Myers, Toerge and Unsworth
ABSENT:	None.
ABSTAIN:	None.

Chair Unsworth stated that appeal rights will terminate 14 days after today and that the decision will stand unless it is so appealed. Later in the meeting, at the conclusion of Item No. 4, there was a motion made by Commissioner Toerge and seconded by Commissioner Hawkins, and passed (5 – 2) to adopt the resolution for the findings of denial for Item No. 3, Whitacre Residence Appeal - (PA2010-105).

ITEM NO. 4 Nero Property Amendment, 15th Street (PA2011-061)
105 15th Street

The property owner is seeking to continue the existing non-conforming commercial uses of the subject property by requesting the following amendments: 1) General Plan Land Use designation from Two-Unit Residential (RT) to Mixed-Use Horizontal 4 (MU-H4), 2) Coastal Land Use Plan designation from Two-Unit Residential (RT-D) to Mixed-Use Horizontal (MU-H), and 3) Zoning designation from Two-Unit Residential (R-2) to the Mixed-Use Cannery Village and 15th Street (MU-CV/15th ST). No new land use or development is proposed at this time.

Senior Planner Javier S. Garcia provided a staff report and utilized a PowerPoint presentation.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Toerge reported that he visited the site.

Commissioner Hawkins reported that he visited the site.

Chair Unsworth reported that he visited the site.

Commissioner Myers reported that he visited the site.

Chair Unsworth opened the public hearing.

Todd Schooler, architect, representing the applicant, submitted documents with pictures and maps to the Commission and stated that he read the staff report and agrees with its conditions.

George Schroeder, resident, stated that he supports the applicants' request.

Chair Unsworth closed the public hearing.

Motion made by Commissioner Toerge and seconded by Commissioner Hawkins, and carried (7– 0) to amend General Plan Land Use designation from Two-Unit Residential (RT) to Mixed-Use Horizontal 4 (MU-H4), amend Coastal Land Use Plan designation from Two-Unit Residential (RT-D) to Mixed-Use Horizontal (MU-H), and amend Zoning designation from Two-Unit Residential (R-2) to the Mixed-Use Cannery Village and 15th Street (MU-CV/15th ST).

AYES:	Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge and Unsworth
NOES:	None.
ABSENT:	None.
ABSTAIN:	None.

Chair Unsworth stated that the decision will be final unless appealed within 14 days from today.

ITEM NO. 5 Restaurant Conditional Use Permit (PA2011-062)
111 Palm Street

The applicant is seeking a conditional use permit to allow an eating and drinking establishment with late hours, an outdoor dining patio, a second floor office area, and a Type 47 (On-Sale General) alcoholic beverage license. Conditional use permit approval is also necessary to reduce the required parking spaces through the approval of a parking management program because the subject property does not provide on-site parking.

Assistant Planner Makana Nova presented a staff report and utilized a PowerPoint presentation.

In response to questions from the Commission, Assistant Planner Nova clarified that the written comments received from the public were in opposition but the members of the public that she spoke to were in support of the project, there is no tenant for the current application noting that the property owner would like to reestablish the entitlement for the property in order to lease the property out to a potential restaurant, the conditions in the proposed resolution would apply to any new tenant going into the business however it is subject to an operator's license which can contain additional conditions set by the Police Department, the operator's license is granted by the Police Department not the Planning Commission, mentioned that the Planning Commission can deny the application without prejudice and that the conditions for the operator's license would not be placed until a new tenant submits plans for the property.

In response to questions from the Commission, Senior Planner Ramirez clarified that the land-use right has to be exercised within 24 months unless there is an extension requested but in this case it is truly a land-use issue, stated that the conditions can be modified if the Commission has concerns, an operator who does not want to stay open passed 11:00 p.m. would not need an operator's license

or require any further public hearing and would be able to operate based on the proposed conditions of approval.

Commissioner Hawkins stated that he has concerns about not having an operator already identified.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Hawkins reported that he drove by the site.

Commissioner Toerge reported that he visited the site.

Chair Unsworth reported that he drove by the site.

Commissioner Myers reported that he visited the site.

Chair Unsworth opened the public hearing.

Nathan Ung, representing the applicant, stated that the property owner would like to reestablish the entitlement for the property in order to lease the property out to a potential restaurant, desires to be flexible enough in the hours of operations for potential tenants and stated that the applicant is agreeable to the hours of 6:00 a.m. to 12:00 midnight daily and 6:00 a.m. to 10:00 p.m. for the outdoor dining patio daily.

In response to questions from Commissioner Hilgren regarding the background, history, and operation portfolio of Lone Oak Newport, Mr. Ung clarified that Lone Oak Newport is the property owner, one of the principals at Lone Oak Newport used to operate restaurants and understands the dynamics involved in running restaurants, the property in question is the only property owned by Lone Oak Newport in Newport Beach and that they own other commercial properties in Orange County including office buildings in Tustin and a vacant parcel that they own in San Clemente. Mr. Ung stated that he would research and get back to the Commission regarding whether or not Lone Oak Newport owns any operating commercial properties like the one in question in California or if there are any existing operating restaurants that they are landlords for.

Commissioner Hawkins expressed his concerns regarding granting a parking waiver which requires that several of the findings be based on the fact that the operation is of a certain character and the Commission has no ability to determine what the character is without an operator.

Discussion ensued between the Commission and the applicant regarding the conditions of approval, ability to rotate the parking, peak parking demand, beach parking and hours of operation.

Chair Unsworth suggested restricting the hours of operation from 4:00 p.m. to midnight eliminating the daytime hours.

Mr. Ung stated that he is opposed to restricting the hours of operation because it doesn't make sense economically for a viable operation.

Mike Lawrence, broker for the property, requested that the hours of operation be limited to either day or evening so that when the open operator comes in they will have to apply to the Planning Commission if they want to extend the hours giving the Planning Commission the protection, leverage and control to limit or add conditions at that time rather than denying the application, approximated that it would take a few months to find a potential tenant, stated that the expired CUP has made the property virtually unmarketable, that having a permanent CUP would make a material difference in marketing the property and that a reduction in tables would be damaging.

In response to questions from Commissioner Hillgren regarding the parking waiver, Assistant Planner Nova stated that the reduction in the required offsite parking would be 32 spaces noting that the credit they receive is for 22 spaces, that 22 spaces equates to 880 square feet of net public area (total net public area parked) not including the outdoor dining patio and that they are allowed a 220 square foot outdoor dining patio however the existing patio is currently 606 square feet.

Commissioner Hillgren stated that his concern is that the Planning Commission could deny the application or approve the application with such limited and restricted conditions that potential operators would still not be interested in the property requiring them to come back to the Planning Commission, that the problem is the parking waiver because it is based upon the operating characteristics and suggested continuing the item for 15 or 30 days to allow the applicant more time to figure things out.

Mr. Lawrence agreed to come back in 30 days, asked if there was any viability of getting the parking waiver and asked for any feedback or guidance from the Commission.

Commissioner Ameri stated that it is very difficult to get a permit with conditions on hours of operation and a reduction of the requirements for parking which are very specific without an operator, suggested showing the potential operators the set of conditions noting that potential operators may want to alter the conditions to their likings so that when the applicant returns to the Planning Commission he will have something that is a little more suitable to the operator, suggested that the applicant come back to the Commission once he has an operator even if it takes 90 days, stated that the proposed conditions are not approved conditions yet and stated that it would be not appropriate to approve the application without an operator because the Commission has no idea what the impact will be on parking or the hours of operation.

Commissioner Hawkins stated that it is a natural restaurant site, that he is not generally supportive of parking waivers but stated that he would be in support of the parking waiver if there was an in lieu parking fee and suggested that the applicant talk with his client and develop restrictive enough conditions so that he would have to come back to the Planning Commission in 30 days.

Commissioner Hilgren stated that a restaurant is an appropriate use for the property, that having a specific operator is critical in order to hold that operator up to the template of the conditions being considered, stated that he finds it hard to support Commissioner Hawkins suggestion that the applicant market the restricted conditions to potential operators and then come back to the Commission in 30 days, although noting that it would be very difficult. He also stated he will support keeping the application open as long as possible so that the applicants' process is quick in coming back to the Commission so it can be applied to the operator very rapidly.

Community Development Director Brandt stated that there are state law requirements in terms of processing discretionary applications and that if there is a continuance request the applicant would have to agree to it, the Commission does have the ability, with the applicants' concurrence, to continue to a date to see if the applicant can secure a potential user for the property, recommended that the Commission take an action on the application if the Commission and the applicant cannot come to a concurrence on a continuance timeframe, because the application has been deemed complete since June and there are time frames that need to be complied with and referred to the Permit Streamlining Act.

Assistant City Attorney Mulvihill noted that the time frame is 180 days from June which is when the application was deemed complete and stated that the applicant should request the continuance.

Chair Unsworth stated that to the extent that a motion is made for a continuance, it would probably only receive a positive vote if the applicant waived its rights under the Permit Streamlining Act or any other ordinance, codes, statues that would require the City to act on a permit application within a specified time.

Mr. Lawrence agreed with Chair Unsworth's statements.

Chair Unsworth opened the public hearing to the general public.

George Schroeder, resident, gave encouragement to the property owner, spoke regarding revitalizing Downtown Balboa and parking issues, mentioned that there is ample parking about 75 percent of the time, stated that he supports a restaurant use on the property but is typically against liquor licenses, expressed his concerns regarding hard liquor licenses and late hours of operation and stated that he does not support giving an operator's license without an operator identified.

Justine Hurry, property owner, expressed her concerns regarding public drunkardness, excessive traffic, noise, the negative impact it might have on renting her property, requested that the Commission deny the application, stated that she never received any notice and mentioned that she has made several offers to buy the building.

Jim Stratton, spoke regarding the Neighborhood Revitalization Committee, stated that he supports the proposed use but is concerned about the parking provisions, suggested that in lieu parking be considered and that it would be better addressed at the upcoming Balboa Neighborhood Revitalization Committee noting that long-range planning for parking is critical in the revitalization of Balboa Village.

Dan Purcell, resident, expressed his concerns regarding hard liquor licenses and stated that it creates a lot of long term problems in the area.

Mr. Lawrence stated that the applicant is open to a continuance and is agreeable to the time waiver as it relates to the Permit Streamlining Act.

Commissioner Hawkins clarified that the applicant is supposed to make the request for a continuance with a knowing waiver of all time limitations put upon the City.

Mr. Lawrence requested for a continuance and a time waiver and stated that he would submit a formal request in writing for the record.

City Attorney Mulvihill clarified that the continuance would be for an additional 90 days.

Mr. Lawrence agreed and requested for a continuance for an additional 90 days.

Chair Unsworth closed the public hearing.

Commissioner Toerge stated that he is very compelled by the applicant's presentation and testimony and that he understands the difficulty and costs, stated that there are restrictions on the conditions, noted that it is a restaurant not a bar, cocktail lounge or night club, referenced the parking waiver and stated that it is inconceivable to him that the 20 or 30 parking spaces could not be found knowing that there are 612 parking spaces near the property and 68 parking spaces across the street, stated that he feels that the applicant is being forced into another delay tactic that he is trying to avoid and stated that with the indulgence of the Commission should the motion fail hopefully somebody on the prevailing side would reconsider the motion and repropose the continuance.

Motion made by Commissioner Toerge and seconded by Commissioner Kramer to approve Use Permit No. UP2011-012 with a closing hour of 12:00 midnight for the interior of the establishment and 10:00 p.m. for the outdoor dining patio, subject to the findings and conditions of approval in the draft resolution.

Commissioner Kramer stated that it is very important to at least be sensitive to the condition of the property because it has been vacant, that the area needs to be revitalized, staff has done a good job at crafting something that works, that there could easily be a parking waiver considering the municipal parking lot which is in close proximity and stated that they should be in favor of the application for those reasons.

Commissioner Ameri mentioned the fact that it is silly to approve a project without an operator and to give parking waivers for a use that could be a small sandwich shop that is open two (2) hours a day or a bar with established operation hours and expressed his concern regarding waiving parking requirements without knowing who is going to park there.

A substitute motion made by Commissioner Ameri and seconded by Commissioner Hawkins to deny the application without prejudice.

Commissioner Toerge stated that he will not support the substitute motion, that he respects the statements made by Commissioner Ameri but in this instance it does not make any sense, stated that the property needs a parking waiver because it has no parking and has never had parking, that the issue is to either give the property a parking waiver or tear the building down and stated that recommending, pursuing and approving the project is consistent with the goals of the City to revitalize the area.

Chair Unsworth agreed with Commissioner Toerge, stated that they have to rely on their abilities to condition the project and that whoever comes in will operate according to those conditions.

Commissioner Hawkins requested that staff address some of the public comments that were made regarding public nuisances such as noise and drunkenness and discuss how the operator's permit will address those concerns.

Assistant Planner Nova clarified that the operator's permit has the ability to limit the hours of operation and require a security plan for the business and noted that the Police Department has the ability to further limit its use, stated that because the existing use is currently considered retail and it is non-conforming the applicant gets a credit of 22 parking spaces based on the retail parking rate for that use, and stated that the City does not currently have an in lieu parking mechanism for the district or City.

The substitute motion made by Commissioner Ameri and seconded by Commissioner Hawkins failed (2-5) to deny the application without prejudice.

AYES:	Ameri and Hawkins
NOES:	Hillgren, Kramer, Myers, Toerge and Unsworth
ABSENT:	None.
ABSTAIN:	None.

Chair Unsworth stated that a two-thirds majority vote is needed to call for the question.

Assistant City Attorney Mulvihill clarified that the vote must pass by a two-thirds majority to immediately call for the question and stop any discussion on the motion on the floor.

The two-thirds majority vote for no discussion carried (6-1).

AYES: Hawkins, Hillgren, Kramer, Myers, Toerge and Unsworth
NOES: Ameri.
ABSENT: None.
ABSTAIN: None.

Chair Unsworth requested that the Commission vote on the pending motion.

Motion made by Commissioner Toerge and seconded by Commissioner Kramer and carried (4-3) to approve Use Permit No. UP2011-012 with a closing hour of 12:00 midnight for the interior of the establishment and 10:00 p.m. for the outdoor dining patio, subject to the findings and conditions of approval in the draft resolution.

AYES: Kramer, Myers, Toerge and Unsworth
NOES: Ameri, Hawkins, Hillgren,
ABSENT: None.
ABSTAIN: None.

Chair Unsworth stated that the decision will be final unless appealed within 14 days from today.

Assistant City Attorney Mulvihill requested to be heard before moving on to New Business.

Assistant City Attorney Mulvihill clarified that Item No. 3 was a motion to uphold the decision of the Zoning Administrator which failed, pointed out the resolution identifying findings for denial of the Zoning Administrators' decision on handwritten page 25 of the staff report and respectfully requested that one of the members of the prevailing vote on the denial (Ameri, Myers, Toerge and Unsworth), under the rules of procedure, consider reconsidering Item No. 3 simply for the purposes of adopting the resolution for denial and noted for the record that the Zoning Administrators' decision was reversed.

Motion made by Commissioner Toerge and seconded by Commissioner Myers, and passed (6 – 1) to reconsider Item No. 3 simply for the purposes of adopting the resolution for denial.

AYES: Ameri, Hawkins, Hillgren, Myers, Toerge and Unsworth
NOES: Kramer.
ABSENT: None.
ABSTAIN: None.

Assistant City Attorney Mulvihill requested that the Commission vote to adopt the resolution for the findings of denial.

Motion made by Commissioner Toerge and seconded by Commissioner Hawkins, and passed (5 – 2) to adopt the resolution for the findings of denial.

Assistant City Attorney Mulvihill clarified that a “no” vote means upholding the decision of the Zoning Administrator.

Discussion ensued between the Commission regarding what the “yes” and “no” vote entails.

AYES: Ameri, Hillgren, Myers, Toerge and Unsworth
NOES: Hawkins and Kramer.
ABSENT: None.
ABSTAIN: None.

I. NEW BUSINESS – None.

J. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 Community Development Director's report.

None.

ITEM NO. 7 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

None.

ITEM NO. 8 Request for excused absences.

Commissioner Toerge requested an excused absence on July 21, 2011.

Commissioner Myers requested an excused absence on July 21, 2011.

Commissioner Hillgren requested an excused absence on July 21, 2011.

Commissioner Hawkins requested a tentative excused absence on July 21, 2011.

Commissioner Hawkins mentioned the possibility of the Planning Commission not having a quorum on July 21, 2011.

Community Development Director Brandt stated that the meeting on August 4, 2011 at 4:00 p.m. has a lengthy agenda and stated that if the Commission anticipates that they are not going to have a quorum on July 21, 2011, staff will just reorder the projects in terms of getting them to the Commission and make sure that the agendas are appropriately balanced.

Discussion ensued regarding public notices that may have potentially been sent for the meeting on July 21, 2011.

ADJOURNMENT - The Planning Commission adjourned at 10:07 p.m. to 4:00 p.m. on July 21, 2011.